



U.S. Citizenship
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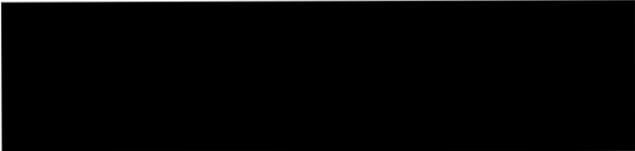
IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse.

The petitioner, through counsel, timely appealed.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social

workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

The petitioner in this case is a native and citizen of China who entered the United States on April 26, 2003, as a K-1 nonimmigrant fiancée. On June 16, 2003, the petitioner married C-W-*, a U.S. citizen, in Travis County, Texas. The petitioner filed the instant Form I-360 on November 2, 2004. To establish her claim of abuse, the petitioner submitted a personal statement. The petitioner alleged abuse based upon the claim that she was shocked and humiliated when her spouse abandoned her after their marriage.

On April 8, 2005, the director requested additional evidence to establish the petitioner's claim of abuse. The petitioner responded to the request on June 7, 2005 by submitting a second statement and a letter from her citizen spouse. In her letter, the petitioner reiterates her claim that she was abandoned by her spouse but acknowledges that her spouse "did not conduct physical violence" against her. The letter from the petitioner's spouse describes how his feelings for the petitioner changed prior to their marriage, and how he decided to marry her "despite the agony of [his] doubts and despite having a new girlfriend."

The director issued a Notice of Intent to Deny (NOID) on March 21, 2006, indicating the evidence submitted by the petitioner was insufficient to establish a claim of abuse. The petitioner responded to the NOID on May 12, 2006, by submitting a third statement. She stated:

My worst fears came true when [C-] told me that he had met someone else, and that he wanted to be with her instead of me. I was deeply hurt and I felt that my life crumbled under me. I felt that I had not even had a chance to be with my husband before he abandoned me for someone else during our relationship.

It is true that [C-] never abused me physically, but to me the mental abuse is one hundred times worse than the physical abuse. I don't think my situation is as simple as those of other abandoned women in the States, because I was not just abandoned by my husband, I was uprooted from my native place, brought to a new world, and abandoned without given an explanation.

After reviewing the evidence contained in the record, including the evidence submitted in response to the RFE and NOID, the director denied the petition, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse. The petitioner, through counsel, submitted a timely appeal and brief, with copies of documents that were previously submitted.

On appeal, counsel states generally that the director misapplied the law and regulations and that the evidence submitted by the petitioner is sufficient to establish that she was subjected to extreme cruelty. As will be discussed, upon review of the record, we concur with the determination of the director that the

* Name withheld to protect individual's identity.

petitioner has failed to establish a claim of abuse and find that the petitioner has failed to overcome this determination on appeal.

First, there does not appear to be any dispute that the petitioner was never threatened with physical harm or subjected to physical harm by her spouse. Thus, the sole determination is whether the petitioner has established that she was subjected to extreme cruelty. The petitioner's claim is based upon the shock and humiliation she felt upon being brought to the United States and then abruptly abandoned by her spouse for another woman after the marriage. While we acknowledge that the petitioner's experience was both stressful and unfortunate, we do not find that the petitioner's abandonment by her spouse and the resultant humiliation and "anguish" can be likened to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Moreover, the petitioner's spouse's actions, while hurtful to the petitioner, do not appear to have been part of an overall pattern of violence against the petitioner. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the decision of the director, the present record fails to establish that the petitioner is a person of good moral character and that she resided with her spouse. The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition*. The record reflects that in the three-year period prior to filing, the petitioner lived in China and Texas. While the petitioner submitted a clearance from China indicating that she had no criminal history, she failed to submit a clearance from Texas.

The regulation at 8 C.F.R. § 204.2(c)(1)(v) states that although the petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the past. According to the statements submitted by the petitioner, she never resided with her spouse. Instead, when she first arrived in the United States, she lived in a hotel where she was quarantined for possible SARS infection. Upon leaving the hotel, the petitioner indicated that she resided with her cousin. The petitioner states that after her marriage, her spouse "still did not ask me to move to his place" and soon after that he went on a trip to Thailand. The petitioner stated:

After [C-] came back from Thailand, I noticed many obvious change in him. He simply said it was because of the cultural differences between us, and he said he didn't want to live with me anymore. I was in a state of shock any newly married woman would be.

I tried my best to contact [C-] . . . but [he] didn't reply and just ignored me. During this time I lived with my cousin in Austin, Texas. I invited [C-] several time [sic] to come see me so that I could understand why he was avoiding me. He always said that he would come, and then he never did.

After [C-] came back from Thailand, he never came to see me, and I never received any assistance

For these additional reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.